

Entered on Docket

July 22, 2020

EDWARD J. EMMONS, CLERK

U.S. BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA



1 Signed and Filed: July 22, 2020

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Dennis Montali

5 DENNIS MONTALI
6 U.S. Bankruptcy Judge

7 UNITED STATES BANKRUPTCY COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 In re:

10 PG&E CORPORATION,

11 - and -

12 PACIFIC GAS AND ELECTRIC COMPANY,)

13 Debtors.)

14)
15 Affects PG&E Corporation)

16 Affects Pacific Gas and)
17 Electric Company)

18 Affects both Debtors)

19 * All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

20

21 **ORDER REGARDING TRANSFER OF PENDING RULE 2004**
EXAMINATIONS TO THE WILDFIRE VICTIM TRUST

22

23 On June 20, 2020, this court entered an order (dkt. 8053)
24 confirming Debtors' and Shareholder Proponents' Joint Plan of
25 Reorganization Dated June 19, 2020 (the "Plan") (dkt. 8053-1).
26 The order authorized the plan proponents to establish a trust
27 (the "Fire Victim Trust") to administer, process, settle,
28 resolve, liquidate, satisfy, and pay all claims of fire victims.

1 In addition, Debtors assigned certain rights and causes of
2 action against third parties to the Fire Victim Trust. *Id.*

3 Prior to confirmation of the Plan, the court entered an
4 order (dkt. 6866) authorizing the Official Committee of Tort
5 Claimants (the "TCC"), which represented the interests of the
6 fire victims in this case, to issue subpoenas pursuant to
7 Federal Rule of Bankruptcy Procedure 2004 ("Rule 2004") to
8 third-party contractors in order to investigate the potential
9 claims being assigned to the Fire Victim Trust and any potential
10 defenses, such as statute of limitations (the "Rule 2004
11 Order").

12 On June 29, 2020, counsel for the TCC sent a letter to the
13 court (dkt. 8206) indicating that approximately 80% of the work
14 in obtaining compliance with the subpoenas had been done, but
15 that approximately 20% remained pending because of full or
16 partial non-compliance by the subpoenaed parties. The TCC
17 identified eight contractors who have not complied at all to the
18 subpoenas and thirteen contractors who have only partially
19 complied. At this time, the TCC is seeking full compliance by
20 Burns & McDonnell Engineering Co., Inc. ("B&M") to a Rule 2004
21 subpoena issued to it.

22 B&M filed a letter opposing the subpoena (dkt. 8236),
23 contending that Debtors have no claims against it and thus the
24 discovery sought by the TCC fell outside the parameters of the
25 Rule 2004 Order. The court disagrees, as Rule 2004 examinations
26 are broader in scope than ordinary discovery in a contested
27 matter. *In re Mastro*, 585 B.R. 587, 597 (9th Cir. BAP 2018)
28 ("As the Rule's text makes clear, the scope of a Rule 2004

1 examination is unfettered and broad; the rule essentially
2 permits a fishing expedition. And the examination may extend to
3 third parties who have had dealings with the debtor."). *Id.*
4 (internal quotation marks and citations omitted).

5 Debtors also filed a letter opposing continued discovery by
6 the TCC (dkt. 8242) on July 2, 2020, contending that the TCC no
7 longer has standing to pursue discovery of claims against
8 contractors, because the claims have been assigned to the Fire
9 Victim Trust and because the Reorganized Debtors should not
10 incur the cost of the TCC's continued pursuit of information
11 from the contractors. In particular, Debtors asserted that the
12 TCC was dissolved pursuant to Section 12.1 of the Plan and thus
13 lacks standing to pursue further discovery:

14 **Dissolution of Statutory Committees.** On the
15 Effective Date, the Statutory Committees shall
16 dissolve, the current and former members of the
17 Statutory Committees, including any ex officio
18 members, and their respective officers, employees,
19 counsel, advisors and agents, shall be released and
20 discharged of and from all further authority, duties,
21 responsibilities and obligations related to and
22 arising from and in connection with the Chapter 11
23 Cases, except for the limited purpose of (i)
24 prosecuting requests for allowances of compensation
and reimbursement of expenses incurred prior
Professionals, including any appeals in connection
therewith, (ii) **having standing and a right to be
heard in connection with any pending litigation,
including appeals, to which such committee is a
party,** or (iii) prosecuting any appeals of the
Confirmation Order.

25 See Plan § 12.1 (dkt. 8048)(emphasis added).
26

27 In its letters filed on June 29 (dkt. 8206) and July 10,
28 2020 (dkt. 8350), the TCC argues that it has standing to enforce

1 the Rule 2004 Order and related subpoenas under section 12.1 of
2 the Plan because the dispute regarding the Rule 2004 subpoenas
3 constitutes "pending litigation" and thus is excluded from the
4 dissolution discharge of its authority and obligations arising
5 from or in connection with the underlying consolidated cases.

6 The court is not persuaded. While the term "litigation" is
7 not a defined term in the Plan, the TCC's description of the
8 2004 orders as "litigation" is not compelling, particularly as
9 Rule 2004 examinations are not available when litigation is
10 pending. As noted in *In re Dinubilo*, 177 B.R. 932, 941 (E.D.
11 Cal. 1993), a "Rule 2004 examination is normally employed at the
12 pre-litigation stage of a bankruptcy case. Once a contested
13 matter is pending, discovery requests are granted under Rule
14 9014, which invokes the procedural safeguards of the Federal
15 Rules of Civil Procedure."

16 In light of its holding that the TCC lacks authority to
17 enforce the Rule 2004 subpoenas, the court must determine how
18 the subpoenas can be enforced. The court will adopt the
19 approach suggested by the Trustee of the Fire Victim Trust in
20 the letter dated July 10, 2020 (dkt. 8352). The discovery done
21 by the TCC is not rendered moot, but the Fire Victim Trust (and
22 thus its Trustee) will assume the TCC's rights and
23 responsibilities with respect to enforcement of the various
24 subpoenas previously issued pursuant to the Rule 2004 Order,
25 including the subpoena issued to B&M. The court expects the
26 parties and their counsel to treat this transition the same way
27 they would if a chapter 11 trustee took over from a chapter 11
28 debtor in possession, or a chapter 7 trustee took over following

1 conversion from chapter 11. This should be a seamless and quick
2 transition.

3 For the foregoing reasons, it is hereby ORDERED that the
4 pending Rule 2004 subpoenas are enforceable by and shall be
5 transferred to the Wildfire Victim Trust. Counsel for the TCC
6 and the Fire Victim Trustee should confer and cooperate to
7 ensure an expeditious and efficient transfer of the Rule 2004
8 discovery.

9 If counsel for B&M and the Trustee continue to disagree on
10 the scope of the Rule 2004 subpoena after they meet and confer,
11 they should arrange for an expedited telephonic conference with
12 the court in accordance with its regular procedures for such
13 disputes.

14 ****END OF ORDER****